

**IN THE MATTER OF  
RAYMOND AND BARBARA  
BROOKHART**

Petitioners

BEFORE THE  
HOWARD COUNTY  
BOARD OF APPEALS  
BA Case No. 06-027C

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**DECISION AND ORDER**

The Howard County Board of Appeals (the "Board") convened on April 26, 2007, to hear and deliberate the petition of Raymond and Barbara Brookhart, Petitioners, for a conditional use for a farm tenant house in an RC-DEO (Rural Conservation - Density Exchange Option) Zoning District, filed pursuant to Section 131.N.20 of the Howard County Zoning Regulations (the "Zoning Regulations").

Board members Robert Sharps, Albert Hayes, Maurice Simpkins, Kevin Doyle and James Walsh were present at the hearing and Chairman Robert Sharps presided. Notice of the hearing was advertised and posted as required under the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

This case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Department of Planning and Zoning Technical Staff Reports dated January 8, 2007, the General Plan for Howard County, the General Plan of Highways, and the petition and plat submitted by the Petitioner were incorporated into the record by reference.

Raymond Brookhart testified in support of the petition. Michael Fagan and John Sokich appeared in opposition to the petition.

## FINDINGS OF FACT

Based upon the testimony and exhibits presented at the hearings, the Board makes the following Findings of Fact:

1. The Petitioners are the owners of the subject property, known as 11300 Barley Field Way, which is a 26.19 acre parcel located on the north side of Barley Field Way approximately 4,000 feet north of MD 99 and located in the 3<sup>rd</sup> Election District (the "Property"). The Property is referenced on Tax Map 10, Grid 16, Parcel 27, Preservation Parcel H. The parcel is zoned RC-DEO (Rural Conservation: Density Exchange Option).

2. The Property is irregular in shape and improved with a two-story, single-family detached dwelling with an attached garage located in the southeastern portion of the lot. A paved driveway serves the dwelling. This driveway would be extended for access to the proposed farm tenant house. Several outbuildings are also situated on the Property. A barn is situated beyond the terminus of the paved driveway. A fence surrounds the area around the barn. Two sheds are located between the house and barn, and a shed is situated to the rear of the house.

3. The Property is encumbered with an environmental preservation easement. A forest conservation easement is situated along the western and northern portions of the lot. A public storm water management drainage and utility easement is located to the east of the dwelling. A stream and wetland and their associated buffers are located to the east of this easement approximately parallel to Marriottsville Road. A ten foot wide tree maintenance easement runs along the southern property line parallel to Barley Field Way except in the area of the storm water management, drainage and utility easement. In addition, an equestrian easement is located in the western portion of the lot.

4. Vicinal properties include the following: across Marriottsville Road to the east is Parcel 35, the approximate 312 acre site of the Sisters of Bon Secours facility; southwest of the Property is Parcel 27, Open Space Lot F, of the Woodford's Grant Subdivision which adjoins the east side of Barley Field Way; further to the west beyond this Open Space parcel is the RC-DEO zoned portion of the same subdivision which is generally improved with single-family detached dwellings. The closest dwelling to the dwelling on the Property is located in this development and is greater than 1,500 feet away.

5. The petition states that the Property is currently used for residential and agricultural purposes. Currently, one single-family detached dwelling and several accessory buildings are located on the Property. The Petitioners propose to construct a farm tenant house on the Property. According to the petition, the farm tenant house is needed for a tenant to assist in the daily care of animals. Access to the Property and the proposed farm tenant house will continue to be via the driveway from Barley Field Way, a local road with a 50-foot wide right-of-way.

The tenant house will be located 99 feet northwest from the principal dwelling and 100 feet from the existing forest conservation easement. The house will be built 390 feet north of Barley Field Way. The farm tenant house will be a two-story colonial style house with a total of 2,563 square feet. The first floor will be 1,907 square feet and the second floor will be 656 square feet. There will be a two car attached garage. The exterior will be brick front with "Hardy Board" sidings on sides and back. The driveway will accommodate additional cars if necessary so that there will be no parking on Barley Field Way by the tenants. The height of the proposed tenant house will not exceed 28 feet.

Proposed landscaping will include foundation plants and flowering plants and trees to enhance the aesthetic appearance of the property.

The proposed tenant house will not be visible to the two closest neighbors located at 1490 Marriottsville Road and 11310 Barley Field Way.

6. Marriottsville Road north of MD 99 is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan. Barley Field Way is depicted as a local road on the same map. Visibility from the driveway entrance onto Barley Field Way appears to be acceptable, with estimated sight distance of more than 500 feet to the east and west.

7. The Property is not in the Metropolitan District and is within the No Planned Service Area of the Howard County Water and Sewerage Master Plan.

8. The Property is designated as Rural Conservation on the Policies Map 2000-2020 of the 2000 General Plan.

9. Michael Fagan, a nearby resident of the Woodford Grant Subdivision, voiced his concerns about the proposed farm tenant house. Mr. Fagan felt that there was a lack of information about the effect this proposal would have on nearby residences.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

#### **I. General Criteria for Conditional Uses (Section 131.B).**

A. The Howard County General Plan designates the area in which the Property is located as a "Rural Conservation" land use. A farm tenant house would provide support for the continued and expanded agricultural use of the Property. The proposed use would result in the

addition of one residential structure on the 26.19 acre Property. The residential nature of the proposed use can be anticipated to have a low intensity of use. The proposed 26.19 acre conditional use site complies with the minimum requirements for the farm tenant house use and meets all required setbacks in the regulations. The existing paved driveway from Barley Field Way, a public road, would be extended for access to the farm tenant house. As such, the Board finds that the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located as required by Section 131.B.1.

B. Adverse Effect. In order to approve the proposed conditional use, Section 131.B.2 of the Zoning Regulations requires the Board to find that the proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with the use. In evaluating the plan under this standard, the Board must consider whether:

(1) The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards, or other physical conditions will be greater at the subject site than it would generally elsewhere in the zone or applicable other zones; and

(2) The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones; and

(3) Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties; and

(4) The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

When assessing a proposed conditional use under this criterion, one must begin with the realization that virtually every human activity has the potential for adverse effect. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Board is not whether the proposed farm tenant house has adverse effects in the RC-DEO zone. The proper question is whether those adverse effects are greater at the proposed site than they would generally be elsewhere in the RC-DEO district. Schultz v. Pritts, 291 Md.1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995). Put another way, in order to defeat a conditional use petition, the evidence must show that the use and proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location with the zone. *Id.*

For the reasons stated below, the Board finds that the preponderance of evidence in the record establishes that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a farm tenant house use in the RC-DEO district.

1. Physical Conditions. The proposed farm tenant house would result in the addition of one structure on a 26.19 acre Property. The use of the proposed structure will be residential in nature and any increase in traffic would be minimal. The residential nature of the proposed use would be in character with the residential and agricultural use of the Property and vicinal properties. All parking and vehicle areas are to be paved. As such, the proposed farm tenant

house would not generate inordinate noise, dust, fumes, odors, glare, vibrations, or cause hazards, as required by Section 131.B.2.a.

2. Structures and Landscaping. The proposed building would comply with the height requirements and would be set back further than required by the regulations. The Property would be landscaped. The structure would be residential in nature and would be compatible with surrounding uses. Consequently, the location, nature and height of structures, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than generally in the zone as required by Section 131.B.2.b.

3. Parking. There are no specific minimum parking requirements for a farm tenant house, however, from the testimony put before the Board, the Board finds that parking will be of adequate size for the particular use as a single family residence and the existing paved driveway will be extended to the proposed farm tenant house. The parking will be buffered by distance from adjacent properties. Consequently, the parking, drives and refuse areas will be properly located and screened from the adjacent properties, as required by Section 131.B.2.c.

4. Drives. The existing driveway which will provide safe access with adequate sight distance, based on actual conditions to enter and exit the property, in accordance with Section 131.B.2.d

## **II. Specific Criteria for Farm Tenant House (Section 131.N.20).**

1. A conditional use for a farm tenant house may be granted in the RC-DEO district provided that the house is occupied by at least one person involved in a bona fide farming operation of the owner. The farm tenant house is needed for a tenant to assist in the daily care of animals in compliance with Section 131.N.20.a.

2. The Property is 26.19 acres in area and complies with Section 131.N.20.b. criteria which requires that the house be located on a parcel of at least 25 acres but less than 50 acres in area.

**ORDER**


Based upon the foregoing, it is this 30<sup>th</sup> day of July, 2007, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Raymond and Barbara Brookhart, Petitioners, for a conditional use for a farm tenant house in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District is hereby **GRANTED**, subject to the following conditions:

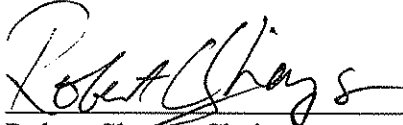
1. The conditional uses shall be conducted in conformance with and shall apply only to the proposed farm tenant house as described in the petition and as depicted on the plan submitted to the Board on April 26, 2007, and not to any other activities, uses, or structures on the Property.
2. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.



ATTEST:


  
Ann Nicholson, Board Secretary

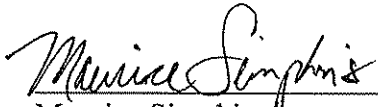
HOWARD COUNTY BOARD OF APPEALS

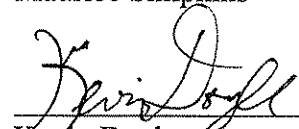
  
Robert Sharps, Chairperson

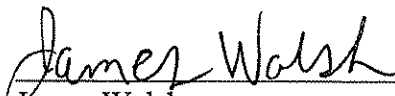
  
Albert Hayes, Vice Chairperson

PREPARED BY:  
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